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Supreme Court, U.S.
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No. 99-1239

IN THE

Supreme Court of the United States

OGLALA SIOUX TRIBAL PUBLIC SAFETY DEPARTMENT,

Petitioner,

v.

BRUCE BABBITT, SECRETARY OF THE INTERIOR,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

REPLY BRIEF

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The writ should be granted because a substantial question of statutory construction affecting major Indian policy and virtually every Indian tribe is at issue. Respondent and the court below misread the governing statute by failing to properly assess its language, purpose, and context.

1. The Government's position results in substantial unfairness to Indian contractors and ultimately leads to the disintegration of the Self-Determination program and policy. An amendment enacted because "[f]ull funding of tribal indirect costs associated with self-determination contracts is essential if the federal policy of Indian Self-determination is to succeed", S. Rep. 100-274 at 13, is now to be interpreted as permitting the agency, for want of a cyclical appropriation, to undermine the clear command in the amendment to "add contract support costs which shall consist of an amount for the *reasonable costs* which must be carried on to ensure compliance with the terms of the contract and prudent management", 25 U.S.C. § 450j-1(a)(2). (emphasis added) Even if the language in 25 U.S.C. § 450j-1(b) on which the Secretary relies were plain (which it is not), the outcome produced by his interpretation is so at odds with the evident Congressional intent as to require reversal of the decision below. *Equal Employment Opportunity Comm. v. Commercial Office Products Co.*, 486 U.S. 107, 120 (1988) (rejecting the more natural reading of statutory language because such an interpretation would lead "to absurd or futile results . . . plainly at variance with the policy of the legislation as a whole"); *Detroit v. Detroit Citizen's Street R. Co.*, 184 U.S. 368, 384 (1902) (rejecting as "hardly credible . . . the city's suggestion that the fare rate agreed on with railroad company, which 'amounted to a contract', would be 'subject to change from time to time' at the city's pleasure") (cited by Justice Breyer concurring in *United States v. Winstar Corp.*, 518 U.S. 839, 913 (1996)).

2. The Secretary's Response contradicts the express language of 25 U.S.C. § 450j-1(a)(2) and 450j-1(f) by assuming power to make after-the-fact reductions in the amounts required to be added for ISDA contract support. Contrary to the Secretary's assertion, the Court of Appeals' decision is *inconsistent* with the overall function of ISDA. By failing to recognize the obligation of the United States to pay the contract price for services already performed, as opposed to the Secretary's responsibility as an official not to pay the price in the absence of appropriations, the decision denies Oglala the mandated unqualified contract amount for contract support costs (CSF) which by definition constitute "the reasonable costs" necessary "to ensure compliance with the terms of the contract and prudent management." 25 U.S.C. § 450j-1(a)(2). In so doing, the decision places the contractor in a position less favorable than the Secretary would have occupied had be kept control. The Secretary is able to draw on other branches of his own agency as well as other federal agencies to administer the direct program defined in § 450j-1(a)(1). For example, his defense of this case is provided by the Justice Department. His facilities and motor vehicles are provided by the GSA. He does not need insurance because the federal government is a self insurer. Thus, CSF is both essential to make self-determination work and irrelevant to the Secretary when he operates the program. Without full contract support, Indian tribes cannot occupy the same position the Secretary does, which is the goal Congress sought to achieve through Pub. L. 100-472.

3. The Secretary ignores the plain language of the Act embodying the distinction between the United States' contract *obligation* to pay the contract price for CSF and the *Secretary's specific authority to pay* that obligation only from available appropriations. Had Congress intended to limit the United States' contractual liability to pay the "full amount of funds to which the contractor is entitled under subsection (a)",

25 U.S.C. § 450j-1(f), it knew how to do so. Attached as Appendix A are fifty statutes each of which contains clear, unambiguous language conferring authority on an agency to contract only to the extent of available appropriations. Several of these statutes appear in Title 25. For example, 25 U.S.C. § 1658 (no. 23) was reviewed by the same committees which reviewed Pub. L. 100-472 and enacted by the same Congress. The contrast in language between this statute (and the others in Appendix A) and § 106(b)'s proviso is dramatic. Use of different language implies different intent. *Bates v. United States*, 522 U.S. 23, 29 (1997); *California Cosmetology Coalition v. Riley*, 110 F.3d 1454, 1460 (9th Cir. 1997) ("We must presume Congress acts with deliberation rather than inadvertence when it drafts a statute.")

In *Cosmetology*, Congress had enacted amendments setting forth and defining a fair and equitable refund policy to be applied to schools receiving federal higher education assistance. The Secretary of Education then promulgated new regulations increasing the refunds required from schools. The situation in *Cosmetology* was strikingly parallel to ours. There, as here, the Secretary relied on a separate clause in the statute [20 U.S.C. § 1092(a)(1)(F)] dealing with disbursement as authority to modify the refund calculation clause. The court construed his action as an ultra vires usurpation of power to amend the statute: "... § 1092(a)(1)(F) is a distribution mechanism for the refund calculated elsewhere, in § 1091b(b)". 110 F.3d at 1460. The Court in *Shoshone-Bannock Tribes v. Shalala*, 58 F. Supp. 2d 1191, 1196 (D. Or. 1999), interpreting § 450j-1(b), the same provision at issue here, adopted the same reasoning in holding that the proviso does not alter the liability of the Government regarding CSF:

> The § 106(b) proviso addresses only the Secretary's duty to disburse funds which the

> Congress has made available to the Secretary to disburse. Regardless of agency appropriations, the § 106(b) proviso does not limit the defendants' obligation to fully fund self-determination contracts.

Unlike these decisions, the Court of Appeals' reading incorrectly fuses a contract amount provision (§ 450j-1(a)) with a disbursal proviso (§ 450j-1(b)) and thereby improperly amends the statute by giving the Secretary the authority to reduce the contract amount when all the express language directs is that he refrain from paying in the absence of appropriations. *Manhattan Gen. Equip. Co. v. Commissioner*, 297 U.S. 129, 134 (1936) (regulation which "operates to create a rule out of harmony with the statute [ ] is a mere nullity."). In this connection, the Secretary's reliance on *Ramah Navajo School Board, Inc. v. Babbitt*, 87 F.3d 1338 (D.C. Cir. 1996) is misplaced. The quotation relied on is dicta and in any case is taken out of context. The full passage makes the same distinction between entitlement and distribution made in *Cosmetology* and *Shoshone-Bannock*:

> Given the mandatory terms of the Tribes' CSF entitlement under the Act, Congress clearly included the proviso not to excuse the Secretary's obligation to follow the mandates of the statute, but rather to make evident that the Secretary is not required to *distribute* money if Congress does not allocate that money to him under the Act . . .

RNSB v. Babbitt, at 1345. (emphasis added)

4. The assertion that Oglala's interpretation renders the proviso surplusage is untrue. The full sentence, read as a whole, protects non-contracting tribes. Further, the mere fact that Congress duplicates a statutory constraint already in

existence does not render the latter surplusage. *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253 (1992) (redundancies across statutes are not unusual). The Appropriations Clause, Art. I, § 9, cl. 7, does not bar Congress from authorizing an agency to enter into a contract in advance of appropriations. *Wetsel-Oviatt Lumber Co., Inc. v. United States*, 38 Fed. Cl. 563, 570 (1997); *Bath Iron Works Corp. v. United States*, 20 F.3d 1567, 1583 (Fed. Cir. 1994) (where the Forest Service lacks appropriations to pay contract debt, there exists the permanent judgment fund). Indeed, the Anti-Deficiency Act, 31 U.S.C. § 1341(a)(1)(B), contains an express exception allowing an officer or agent of the government to enter into contracts or assume obligations on behalf of the United States Government when "authorized by law". Finally, the argument that by signing a contract including the statutory language Oglala has somehow accepted the "subject-to-availability" construction proffered by the Secretary is, of course, absurd and begs the question, which is whether the statute as a whole including the contract support funding provisions allows for such a skewed construction.

6. In our unique context, where Congress has seen fit to limit an appropriation for a discrete category of funding representing the reasonable costs necessary to administer programs at levels authorized and mandated by the statute, the funding provisions for CSF must indeed be construed to authorize pre-appropriation contracts. The statute's language supports this view. Unlike direct program funding under subpart 450j-1(a)(1), subpart 450j-1(a)(2) contains no qualification or condition on the Secretary's duty to "add the amount required" for contract support to the contract. Thus, while the direct program level may fluctuate according to yearly appropriations [because those appropriations define the program base under subpart 1(a)(1), namely, the amount which "the Secretary would have otherwise provided for [his]

operation of the program"] CSF funds constitute an agreed percentage needed to properly manage that size program. By logic and definition this amount, once agreed upon, becomes an absolute, a stated proportion of the direct program called the indirect cost rate. While the statute (§ 450j-1(a)(1)) commands the Secretary to contract for the same direct program level he would have operated, any diminution in the amount of CSF funding (§ 450j-1(a)(2)) needed to operate that program inevitably leads to mal-administration and defeats the statutory purpose. The Secretary's reading simply recreates the very problem which led Congress to amend the statute in 1988 and again in 1994.

7. The Secretary selectively and inaccurately cites isolated provisions of the Act and thereby gives a false and inaccurate picture of its structure, content, and purpose. He ignores numerous provisions requiring stated amounts for CSF to be included in ISDA contracts: The Act guarantees that contract support costs are amounts a tribe "is *entitled* to receive"; that they are an "entitle[ment]" and are "*required to be paid*"; that they "*shall be added*" to the contract amount; that "*the Secretary shall add* to the contract the *full* amount of funds to which the contractor is entitled"; and that contract support costs *shall* consist of specified categories and "*shall* include" the various amounts determined under § 450j-1(a). 25 U.S.C. §§ 450j-1(a)(2); (a)(3)(B); (a)(5); (f); 450*l*(c)[¶(b)(4)] (emphasis added). By not assessing these provisions, the Secretary violates basic rules of statutory construction. *Holy Trinity Church v. United States*, 143 U.S. 457, 459, 463 (1892) (court must apply spirit of law and not letter if letter is not within the intention of its makers . . . "another guide to the meaning of a statute is found in the evil it is designed to remedy"). In any case, § 450j(c) merely permits multi-year terms in ISDA contracts and in that context addresses the reality that program levels cannot be predicted in advance of appropriations. Indeed, by focusing

on this one provision the Secretary violates the same rule (specific governs the general) he attempts to apply to the proviso in § 450j-1(b) compared with § 450j-1(a). As for the model contract, § 450*l*(c), the answer is that the provision in ¶1(b)(4) simply combines in one contract provision both the funding amount clauses of 450j-1(a) and the payment clause limitation in § 450j-1(b). (If the Secretary's reading were correct, there would be no need for the second sentence in § 450*l*(c)¶(b)(4).) Neither alone nor in context do either of these provisions remove or relax the Secretary's duty to execute contracts containing the contract prices mandated in § 450j-1(a) and 1(f) or the United States' resulting liability for them.

8. The Secretary incorrectly describes *New York Airways v. United States*, 369 F.2d 743 (Ct. Cl. 1966) as containing an unqualified contractual obligation [to pay]. "[N]either the statute authorizing the contract nor the contract itself limited the government obligation to pay based on the availability or unavailability of appropriations." (Response at 14). Yet section 406(c) of the Federal Aviation Act of 1958 (49 U.S.C. § 1376(c)) says:

> The Postmaster General shall make payments *out of appropriations* for the transportation of mail . . . The Board shall make payments of the remainder of the total compensation payable under this section *out of appropriations made to the Board for that purpose.*

(emphasis is original) *Id.*, at 745. Whether or not the contract included this language is immaterial since contracts with the federal government incorporate the law as it existed at the time the contract was made. *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 384-385 (1947), cited in *Jackson v. United States*, 573 F.2d 1189, 1194 (Ct. Cl. 1978). The similarity of the statute in *N.Y. Airways* and § 450j-1(b) is striking.

The Secretary also describes the Indian canon of construction as applying only to "treaties". (Response at 16). That is not correct. *Ramah Navajo Chapter v. Lujan*, 112 F.3d 1455, 1461 (10th Cir. 1997), citing *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985) ("The State fails to appreciate, however, that the standard principles of statutory construction do not have their usual force in cases involving Indian law . . . '[T]he canons of construction applicable to Indian law are rooted in the unique trust relationship between the United States and the Indians' (citing *Oneida County v. Oneida Indian Nation*, 470 U.S. 226, 247 (1985) . . . [S]tatutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit (citations omitted)"). This rule has been incorporated into ISDA, 25 U.S.C. § 450*l*(c)(a)(2). In turn the existence of ambiguity turns not on narrow reading of the provision in question but on analysis of the context, purpose, and scheme in which the provision is found. *King v. St. Vincent's Hospital*, 502 U.S. 215, 221 (1991) ("meaning of statutory language, plain or not, depends on context"); *Brown v. Gardner*, 513 U.S. 115, 118 (1994) ("[a]mbiguity is a creature not of definitional possibilities but of statutory context").

The phrase "provision of funds" is no where defined. The different wording in most of § 106(b) which limits the circumstances in which the Secretary may reduce funding for ISDA contracts ["the amount of funds required by subsection (a) of this section shall not be reduced (except) (enumerated circumstances) . . ."], as well as the use of unqualified normative language in both § 450j-1(a)(2) and § 450j-1(f) together with the history of the Act, its amendments, and its stated purpose to "maximize Indian participation in the direction of educational as well as other Federal services to Indian communities" (25 U.S.C. § 450a(a)) all lead to the conclusion that "provision of funds" cannot be interpreted as the Secretary wishes. In any case,

Oglala's reading *is* reasonable. A provision may be plain in one section but ambiguous in another. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 343 (1997). Thus, under the Indian canon the Court need not decide whether Respondent's construction is also reasonable; the threshold issue is whether Oglala's construction is reasonable. If it is, Oglala prevails.

In this case the Indian canon reinforces the outcome produced by the ordinary rules of construction. Oglala's interpretation accords with legislative history and purpose, and harmonizes and gives effect to all provisions and words of the statute. The Secretary's reading does not. By unauthorized administrative action, the Secretary removes the legal force of the mandatory CSF funding provisions from the Act and gives "provision of funds" a meaning far beyond what the literal text permits.

The Secretary's construction makes full ISDA funding problematic, uncertain, and whimsical. It creates internal inconsistency. It mandates a contract amount and then takes it back. In the eye of the concurrence below, the result is a "travesty". *Babbitt v. Oglala Sioux Tribal Public Safety Dept.*, 194 F.3d 1374, 1382 (Fed. Cir. 1999). If this inconsistency can be avoided it must be. "Congress could not have intended to 'paralyze with one hand what it sought to promote with the other'." *Escondido Mutual Water Co. v. La Jolla Band of Mission Indians*, 466 U.S. 765, 776 (1984).

CONCLUSION

For these reasons and the reasons set forth in the petition, the writ should be issued.

Respectfully submitted,

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APPENDIX

APPENDIX — RELEVANT STATUTES

1. 7 U.S.C. § 178n(c) ("Notwithstanding any other provision of this subchapter the authority to enter into contracts shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.") (Pub. L. 95-592, § 16, Nov. 4, 1978, 92 Stat. 2534).

2. 8 U.S.C. § 1524(b) ("The authority to enter into contracts under this subchapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.") (June 27, 1952, c. 477, Title IV, Ch. 2 § 414, as added Mar. 17, 1980, Pub. L. 96-212, Title III, § 311(a)(2), 94 Stat. 116).

3. 10 U.S.C. § 1076a(g) ("The authority of the Secretary of Defense to enter into a contract under this section for any fiscal year is subject to the availability of appropriations for that purpose.") (Added Pub. L. 99-145, Title VI, § 651(a)(1), Nov. 8, 1985, 99 Stat. 655).

4. 10 U.S.C. § 2350e(b) ("Authority under this section to enter into contracts shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.") (Added Pub. L. 101-189, Div. A, Title IX, § 932(a)(1), Nov. 29, 1979, 103 Stat. 1536).

5. 10 U.S.C. § 2632(b)(4) ("The authority under subsection (a) to enter into contracts under which the United States is obligated to make outlays shall be effective for any fiscal year only to the extent that the budget authority for such outlays is provided in advance by appropriation Acts.") (Pub. L. 96-125, Title VIII, § 807(a) to (c)(1), Nov. 26, 1979, 93 Stat. 949, 950).

6. 10 U.S.C. § 2780(a)(2) ("The authority of the Secretary to enter into a contract under this section for any fiscal year is subject to the availability of appropriations.") (Added Pub. L. 99-661, Div. A., Title XIII, § 1309(a), Nov. 14, 1986, 100 Stat. 3982).

7. 12 U.S.C. § 1715Z-1(i)(1) ("The aggregate amount of outstanding contracts to make such payments shall not exceed amounts approved in appropriation Acts . . . .") (June 27, 1934, c. 847, Title II, § 235, as added Aug. 1, 1968, Pub. L. 90-448, Title I, § 101(a), 82 Stat. 479).

8. 15 U.S.C. § 648(*l*) ("The authority to enter into contracts shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts.") (Pub. L. 85-536, § 2[21], as added Pub. L. 96-302, Title II, § 202, July 2, 1980, 94 Stat. 843).

9. 15 U.S.C. § 649b(h) ("The authority to enter into contracts shall be in effect for each fiscal year only to the extent or in the amounts as are provided in advance in appropriation Acts.") (Pub. L. 96-481, Title III, § 302, Oct. 21, 1980, 94 Stat. 2331).

10. 15 U.S.C. § 652(i) ("Any authority to enter contracts or other spending authority provided for in this section is subject to amounts provided for in advance in appropriations Acts.") (Pub. L. 85-536, § 2[25], as added Pub. L. 101-515, Title V, § 7, Nov. 5, 1990, 104 Stat. 2142).

Appendix

11. 15 U.S.C. § 656(i) ("The authority of the Administrator to enter into contracts shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts.") (Pub. L. 85-536, § 2[29], formerly § 2[28], as added Pub. L. 102-191, § 2, Dec. 5, 1991, 105 Stat. 1589) (renumbered and amended)).

12. 16 U.S.C. § 3208(a) ("No authority to enter into contracts or to make payments or to expend previously appropriated funds under this Act shall be effective except to the extent or in such amounts as are provided in advance in appropriation Acts.") (Pub. L. 96-487, Title XIII, § 1321, Dec. 2, 1980, 94 Stat. 2487).

13. 16 U.S.C. § 284(i) ("No authority under this subchapter to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts.") (Pub. L. 89-671, § 10, as added Pub. L. 97-310, Oct. 14, 1982, 96 Stat. 1458).

14. 16 U.S.C. § 429b-5(b) ("Notwithstanding any other provision of sections 429b to 429b-5 of this title, authority to enter into contracts, to incur obligations, or to make payments under sections 429b to 429b-5 of this title shall be effective only to the extent, and in such amounts as are provided in advance in appropriation Acts.") (Apr. 17, 1954, c. 1553, § 6, as added Oct. 13, 1980, Pub. L. 96-442, § 2, 94 Stat. 1887).

15. 16 U.S.C. § 3644 ("New spending authority or authority to enter into contracts provided in this chapter shall be

effective only to such extent, or in such amounts, as are provided in advance in appropriation Acts.") (Pub. L. 99-5, § 15, Mar. 15, 1985, 99 Stat. 15).

16. 20 U.S.C. § 2392 ("Any authority to make payments or to enter into contracts under this chapter [20 U.S.C.A. § 2301 et seq.] shall be available only to such extent or in such amounts as are provided in advance in appropriation Acts.") (Pub. L. 88-210, Title III, § 312, as added Pub. L. 105-332, § 1(b), Oct. 31, 1998, 112 Stat. 3122).

17. 20 U.S.C. § 3475(b) ("Notwithstanding any other provisions of this chapter, no authority to enter into contracts or to make payments under this subchapter shall be effective except to such extent or in such amounts as are provided in advance under appropriation Acts.") (Pub. L. 96-88, Title IV, § 415, Oct. 17, 1979, 93 Stat. 685).

18. 21 U.S.C. § 1181 ("The authority of the Secretary to enter into contracts under this subchapter and subchapter V of this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.") (Pub. L. 92-255, Title IV, § 414, as added Pub. L. 96-181, § 9(a), Jan. 2, 1980, 92 Stat. 1314).

19. 22 U.S.C. § 2194a ("The authority of the Overseas Private Investment Corporation to enter into contracts under section 2194(a) of this title shall be effective for any fiscal year beginning after September 30, 1981, only

to such extent or in such amounts as are provided in appropriation Acts.") (Pub. L. 97-65, § 5(b)(2), Oct. 16, 1981, 95 Stat. 1023).

20. 22 U.S.C. § 4609(c) ("Any authority provided by this chapter to enter into contracts shall be effective for a fiscal year only to such extent or in such amounts as are provided in appropriation Acts.") (Pub. L. 98-525, Title XVII, § 1710, Oct. 19, 1984, 98 Stat. 2659).

21. 25 U.S.C. § 640d-11(d)(2) ("The authority of the Commissioner to enter into contracts for the provision of legal services for the Commissioner or for the Office of Navajo and Hopi Indian Relocation shall be subject to the availability of funds provided for such purpose by appropriation Acts.") (As amended Pub. L. 100-666, § 4(a), Nov. 16, 1988, 102 Stat. 3929).

22. 25 U.S.C. § 764(b) ("Provided, That no authority to enter into contracts or to make payments under this subchapter shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.") (Pub. L. 96-227, § 5, Apr. 3, 1980, 94 Stat. 319).

23. 25 U.S.C. § 1658 ("The authority of the Secretary to enter into contracts under this title shall be to the extent, and in an amount, provided for in appropriation Acts.") (Pub. L. 94-437, Title V, § 508, as added Pub. L. 100-713, Title V, § 501, Nov. 23, 1988, 102 Stat. 4824).

24. 25 U.S.C. § 1805 ("No authority to enter into contracts provided by this section shall be effective except to the

extent authorized in advance by appropriations Acts.") (Pub. L. 95-471, Title I, § 105, formerly § 104, Oct. 17, 1978).

25. 29 U.S.C. § 1581 ("Notwithstanding any other provision of this chapter, no authority to enter into contracts or financial assistance agreements under this chapter shall be effective except to such extent or in such amount as are provided in advance in appropriation Acts.") (Pub. L. 97-300, Title I, § 171, Oct. 13, 192, 96 Stat. 1354).

26. 29 U.S.C. § 2939(f) ("Notwithstanding any other provision of this chapter [29 U.S.C.A. § 2801 et seq.], the Secretary shall have no authority to enter into contracts, grant agreements, or other financial assistance agreements under this chapter except to such extent and in such amounts as are provided in advance in appropriations Acts.") (Pub. L. 105-220, Title I, § 189, Aug. 7, 1998, 112 Stat. 1051).

27. 38 U.S.C. § 1711(c)(2) ("The authority of the Secretary to enter into contracts under this subsection shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.") (Pub. L. 96-22, Title II, § 202, June 13, 1979, 93 Stat. 54).

28. 38 U.S.C. § 1712A(e)(3) ("The authority of the Secretary to enter into contracts under this subsection shall be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.") (Added Pub. L. 96-22, Title I, § 103(a)(1), June 13, 1979, 93 Stat. 48, § 612A).

29. 38 U.S.C. § 1720C(e) ("The authority of the Secretary to enter into contracts under this section shall be effective for any fiscal year only to the extent that appropriations are available.") (Added Pub. L. 101-366, Title II, § 201(a)(1), Aug. 15, 1990, 104. Stat. 437, § 620c).

30. 38 U.S.C. § 1732(d)(1) ("The authority of the Secretary to enter into contracts and to make grants under this section is effective for any fiscal year only to the extent that appropriations are available for that purpose.") (Added Pub. L. 93-82, Title I, § 107(a), Aug. 2, 1973, 87 Stat. 184, § 632).

31. 42 U.S.C. § 238k ("The authority of the Secretary to enter into contracts under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.") (July 1, 1944, c. 373, Title II, § 242, formerly Title V, § 514, as added Nov. 9, 1978, Pub. L. 95-632 § 11(e), 92 Stat. 3456, renumbered).

32. 42 U.S.C. § 241(b)(5) ("The authority of the Secretary to enter into any contract for the conduct of any study, testing, program, research, or review, or assessment under this subsection shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.") (July 1, 1944, c. 373, Title III, § 301, 58 Stat. 691).

33. 42 U.S.C. § 300e-16(c) ("The authority of the Secretary to enter into contracts under subsections (a) and (b) of this section shall be effective for any fiscal year only to

such extent or in such amounts as are provided in advance by appropriation Acts.") (July 1, 1944, c. 373, Title XIII, § 1307, as added Nov. 1, 1978, Pub. L. 95-559, § 7(a), 92 Stat. 2134).

34. 42 U.S.C. § 300v-2(c) ("The authority of the Commission to enter into such contracts is effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.") (July 1, 1944, c. 373, Title XVIII, § 1803, as added Nov. 9, 1978, Pub. L. 95-622, Title III, § 301, 92 Stat. 3440).

35. 42 U.S.C. § 702(a)(1) ("The authority of the Secretary to enter into any contracts under this subchapter is effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.") (Aug. 14, 1935, c. 531, Title V, § 502, as added Aug. 13, 1981, Pub. L. 97-35, Title XXI, § 2192(a), 95 Stat. 819).

36. 42 U.S.C. § 1437c(c)(1) ("The additional authority to enter into such contracts provided on or after October 1, 1980, shall be effective only in such amounts as may be approved in appropriation Acts.") (Pub. L. 96-399, Title II, §§ 201(a), 210, Oct. 8, 1980, 94 Stat. 1624, 1636).

37. 42 U.S.C. § 1437s(g) ("Any authority of the Secretary under this section to provide financial assistance, or to enter into contracts to provide financial assistance, shall be effective only to such extent or in such amounts as are or have been provided in advance in an appropriation Act.") (Sept. 1, 1937, c. 896, Title I, § 21 as added Feb.

5, 1988, Pub. L. 100-242, Title I, § 123, 101 Stat. 1842) (later redesignated and amended).

38. 42 U.S.C. § 2286h ("The authority of the Board to enter into contracts under this subchapter is effective only to the extent that appropriations (including transfer of appropriations) are provided in advance for such purpose.") (Aug. 1, 1946, c. 724, Title I, § 319, as added Sept. 29, 1988, Pub. L. 100-456, Div. A, Title XIV, § 1441(a)(1), 102 Stat. 2083).

39. 42 U.S.C. § 2394 ("The authority to enter into a contract under the preceding sentence with the Los Alamos School Board and with the county of Los Alamos, New Mexico, shall be effective with respect to a period before July 1, 1997, only to the extent or in such amounts as are provided in appropriation Acts.") (Pub. L. 99-661, Div. C, Title I, § 3138(b)(1), Nov. 14, 1986, 100 Stat. 4066).

40. 42 U.S.C. § 4594 ("The authority of the Secretary to enter into contracts under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.") (Pub. L. 91-616, Title VI, § 1604, as added Pub. L. 96-180, § 17, Jan. 2, 1980, 93 Stat. 1306).

41. 42 U.S.C. § 5671(a)(7)(B) ("New spending authority or authority to enter into contracts . . . shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts.") (Pub. L. 93-415, Title II, § 299 formerly § 261, Sept. 7, 1974, 88 Stat. 1129).

42. 42 U.S.C. § 7256(b) ("Notwithstanding any other provision of this subchapter, no authority to enter into contracts or to make payments . . . shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.") (Pub. L. 95-91, Title VI, § 646, Aug. 4, 1977, 91 Stat. 599).

43. 42 U.S.C. § 7923 ("The authority under this subchapter to enter into contracts or other obligations requiring the United States to make outlays may be exercised only to the extent provided in advance in annual authorization and appropriation Acts.") (Pub. L. 95-604, Title I, § 113, Nov. 8, 1978, 92 Stat. 3031).

44. 42 U.S.C. § 8274 ("Authority under this part to enter into acquisition contracts shall be only to the extent as may be provided in advance in appropriation Acts.") (Pub. L. 95-619, Title V, § 565, Nov. 9, 1978, 92 Stat. 3281).

45. 42 U.S.C. § 9662 ("Any authority provided by this Act, including any amendment made by this Act, to enter into contracts to obligate the United States or to incur indebtedness for the repayment of which the United States is liable shall be effective only to such extent or in such amounts as are provided in appropriation Acts.") (Pub. L. 99-499, § 3, Oct. 17, 1986, 100 Stat. 1614).

46. 42 U.S.C. § 12377(a) ("New spending authority or authority to enter into contracts as provided in this subchapter shall be effective only to the extent and in such amounts as are provided in advance in

appropriations Acts.") (Pub. L. 101-501, Title IX, § 988, Nov. 3, 1990, 104 Stat. 1283).

47. 48 U.S.C. § 1933(j)(3) ("No authority under this subsection to enter into contracts or to make payments shall be effective except to the extent and in such amounts as provided in advance in appropriations Acts.") (Pub. L. 99-658, Title I, § 104, Nov. 14, 1986, 100 Stat. 3675).

48. 49 U.S.C. § 103(e) ("Notwithstanding any other provision of this chapter, no authority to enter into contracts or to make payments under this subsection shall be effective, except as provided for in appropriations Acts.") (Pub. L. 103-440, Title II, § 216, Nov. 2, 1994, 108 Stat. 4624).

49. 50 App. U.S.C. § 1989b-8 ("No authority under this title . . . to enter into contracts or to make payments shall be effective in any fiscal year except to such extent and in such amounts as are provided in advance in appropriations Acts.") (Pub. L. 100-383, Title I, § 109, Aug. 10, 1988, 102 Stat. 910).

50. 50 App. U.S.C. § 1989c-7 ("No authority under this title . . . to enter into contracts or to make payments shall be effective in any fiscal year except to such extent and in such amounts as are provided in advance in appropriations Acts.") (Pub. L. 100-383, Title II, § 208, Aug. 10, 1988, 102 Stat. 916).